IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MRS. JUSTICE K.HEMA

MONDAY, THE 22ND OCTOBER 2007 / 30TH ASWINA 1929

MFA.No. 554 of 2000(D)

OA.8/1991 OF FOREST TRIBUNAL, KOZHIKODE .
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APPELLANTS/ RESPONDENTS IN THE O.A:
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1. **CHIEF SECRETARY,**
   GOVERNMENT OF KERALA.

2. **THE CUSTODIAN & EX-OFFICIO SPECIAL SECRETARY**
   TO GOVERNMENT AGRICULTURE (FOREST SPECIAL),
   DEPARTMENT.

BY SPL.GOVT.PLEADER SRI. M.P. PRAKASH.

RESPONDENT/ APPLICANT IN THE O.A:

PHILIP KOSHY, S/O. LATE KOSHY I POTHEN,
PONNIDAYALAYAM HOUSE, THEKKE MALAMPUZHA,
KADUKKAMKUNNAN AMSOM, PALAKKAD TALUK.

BY ADV. SRI.D.KRISHNA PRASAD,
ADV. SRI.JOJI VARGHESE,
ADV. SRI.T.P.ELDHOSE.

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 22/10/2007,THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON C.M.P. NO. 3051/2000 IN M.F.A. NO. 554/2000

DISMISSED

SD/- J.B.KOSHY, JUDGE,

22/10/2007. **SD/- K. HEMA, JUDGE.**

//TRUE COPY//

prv.

J.B. KOSHY & K.HEMA, JJ.

M.F.A.No. 554 of 2000

Dated this the 22nd day of October, 2007

Judgment

Koshy,J.

Respondent filed an application under section 8-D of the Kerala Private Forests (Vesting and Assignment) Act, 1971 (in short 'the Act') that possession of three acres of his land is obstructed to by the forest authorities on the contention that it is vested with the Government as private forest in view of section 3 (1) of the Act. The contention of the appellant was that the land was not identified and the title was not proved. It was also contended that there is no evidence of cultivation or evidence regarding intention of cultivation when the Act came into force. It is further contended that the land is covered under the Madras Preservation of Private Forests Act (MPPF Act) and, therefore, it is automatically a private forest. So long as the respondent was not able to prove that they are entitled to get exemption under

section 3 (2) or 3 (3), the land is vested with the Government. The land involved is situated in survey number 695/A1A1 of Malampuzha village. Property originally obtained by one Mathai under registered lease deed No.3211/1953 of the Palakkad Sub Registry office. By Ext.A1 dated 11.3.1961, it was sold and by Ext.A2 dated 3.6.1970, it was again sold to one George and that George obtained purchase certificate for 18 acres of land as per O.A. No.135 of 1972. The said George gifted 10 acres to his children by Ext.A3 dated 18.2.1974 and Ext.A9 shows that Rubber Board registration was also obtained. By Ext.A4 dated 7.12.1978 three acres of land was purchased by the claimants. George also assigned jenmam right over the said three acres in favour of the claimant by Ext.A5. The tribunal found that in view of these documents, title to the property was established. It is true that the land in question is situated in Malampuzha area. If the land is covered under the MPPF Act, the land will be vested as private forest. For application of MPPF Act, it should be a forest situated in the Malabar district and part of land having 100 acres which may be declared by the State Government for the purpose of this Act by notification in the Fprt St.George Gazette (or Kerala

Gazette). The appellant did not produce any such notification to show that this land is covered under the MPPF Act even though under the Vesting Act, the land was demarcated and notification was published to that effect. If the land is vested in the State Government under section 3 (1), the land can be demarcated and notification can be published. But, demarcated land is vested forest in Malabar area and the land should be covered under the MPPF Act. There should be a notification published under the MPPF Act. No such notification has been published in respect of this property. It is stated in the schedule to the petition that one boundary is high rock 'ഉയർന്ന പാറ' and other properties are private lands. It is the case of the respondent that the land was cultivated and even though forest authorities did not allow them to cultivate contending that it is vested with the Government and, therefore, when the commissioner visited on 16.5.1992 there were some underneath growths, but, commissioner noticed that at that time also there were rubber plantations with underneath growth. The lands on either side are covered by rubber plantations and it was found that only one rosewood

tree was found inside the property. Forest trees were very few. It was also found that there are boundaries (കയ്യാലകൾ) covering throughout the southern boundary showing that it is a cultivated property. It is also found that underneath growth was there which is explained by the respondent because the forest officials did not allow them to cultivate. Even if it is a private forest, if there is intention to cultivate under section 3 (2), the property will be exempted. Here, commissioner reported that the land was fit for cultivation of rubber and it was surrendered by kayyalas and three sides are private lands with rubber plantation. Forest officials are not allowing any cultivation also saying that the land is vested in the forest. But, construction of kayyalas etc. shows the intention of cultivation at the time of relevant date. Ext.A9, a document issued by the Divisional Forest Officer, shows that 18 acres of land in R.S.No.695/A1A1 are not private forests. The document number mentioned in the above certificate is none other than Ext.A2. So, the three acres covered by O.A. forms part of the above area. Therefore, forest officials themselves stated that the land is not a private forest to

be vested with the Government. The purchase certificate issued by the Land Tribunal also shows that the land was being cultivated by the predecessor-in-interest Ext.X1 series. Documents also show that the property was cultivated before forest officials prevented the same. Finding with regard to Ext.A9 was not challenged in the appeal memorandum. Order of the tribunal is based on finding of facts after considering the evidence adduced in the case.

In the above circumstances, we are of opinion that no interference is required in the order of the tribunal. Appeal dismissed.

J.B.KOSHY
JUDGE

K. HEMA
JUDGE

vaa

J.B. KOSHY AND
K.HEMA,JJ.

M.F.A.NO. 554 OF 2000

Judgment

Dated:22nd October, 2007